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Attorney for Plaintiff  
BRUCE ALBERT JOHNSON

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

BRUCE ALBERT JOHNSON,  
  
Plaintiff,  
  
v.  
  
CFS II, INC., an Oklahoma corporation,  
  
Defendant.

Case No. 5:12-CV-01091-LHK-PSG

**DECLARATION OF FRED W. SCHWINN  
IN SUPPORT OF MOTION TO COMPEL  
FURTHER PRODUCTION OF  
DOCUMENTS AND ELECTRONICALLY  
STORED INFORMATION IN RESPONSE  
TO DISCOVERY REQUESTS**

[Fed. R. Civ. P. 37(a) and Civil L.R. 37]

Hearing Date: February 19, 2013  
Hearing Time: 10:00 a.m.  
Hearing Judge: Honorable Paul S. Grewal  
Hearing Courtroom: 5, 4th Floor  
Hearing Location: 280 South First Street  
San Jose, California

I, Fred W. Schwinn, declare under penalty of perjury, under the laws of the United States, 28 U.S.C. § 1746, that the following statements are true:

1. I am an attorney at law duly licensed to practice before all the courts of the State of California and one of the attorneys of record for Plaintiff, BRUCE ALBERT JOHNSON (hereinafter "JOHNSON").

2. I have personal knowledge of the following facts, and if called as a witness, I could and would competently testify thereto.

1           3. On May 24, 2012, I served on Defendant, CFS II, INC. ("CFS II"), by first-class  
2 mail, Plaintiff's First Request for Production of Documents Propounded to Defendant, CFS II, Inc. A  
3 true and correct copy of Plaintiff's First Request for Production of Documents Propounded to  
4 Defendant, CFS II, Inc., is attached hereto and marked as Exhibit "A."

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6           4. On or about October 9, 2012, CFS II served its Supplemental Responses to  
7 Requests for Production of Documents, which included boilerplate objections and an incomplete  
8 production. In many instances, CFS II stated that "[a]ll documents in responding party's possession,  
9 custody or control are produced herewith." A true and correct copy of CFS II's Supplemental  
10 Responses to Requests for Production of Documents is attached hereto and marked as Exhibit "B."

11  
12           5. On September 24, 2012, I served on CFS II, Notice of Taking Deposition of  
13 Defendant CFS II, Inc.'s Designated Representative(s) Pursuant to Fed. R. Civ. P. 30(b)(6) by  
14 Stenographer and/or Videotape, Duces Tecum, which included a request for production of documents  
15 pursuant to Fed. R. Civ. P. 30(b) and 34. A true and correct copy of Notice of Taking Deposition of  
16 Defendant CFS II, Inc.'s Designated Representative(s) Pursuant to Fed. R. Civ. P. 30(b)(6) by  
17 Stenographer and/or Videotape, Duces Tecum is attached hereto and marked as Exhibit "C."

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19           6. On November 6, 2012, I conducted the deposition of Bryan R. Lohmeyer, CFS II's  
20 Rule 30(b)(6) witness in Tulsa, Oklahoma. CFS II produced no documents at the deposition. Further,  
21 Mr. Lohmeyer testified about many documents in the possession of CFS II which, while responsive to  
22 JOHNSON's document requests, were not produced in discovery. At the deposition, I requested that all  
23 responsive documents which were not previously provided be produced. Selected excerpts from this  
24 November 6, 2012, deposition are attached hereto and marked as Exhibit "D."

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26           7. On December 10, 2012, I sent via fax to Robert C. Chandler, counsel for CFS II in  
27 this matter, in an effort to meet and confer regarding the requested production of documents responsive  
28

1 to JOHNSON's document requests, including those documents identified by Mr. Lohmeyer at the Rule  
2 30(b)(6) deposition. A true and correct copy of this December 10, 2012, letter is attached hereto and  
3 marked as Exhibit "E."

4  
5 8. On or about December 11, 2012, Mr. Chandler sent a letter in response to my  
6 December 10, 2012, meet and confer letter. In this letter, Mr. Chandler stated that CFS II would  
7 supplement its document production by January 4, 2013. A true and correct copy of this December 11,  
8 2013, letter is attached hereto and marked as Exhibit "F."

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10 9. On January 9, 2013, I received an email from Mr. Chandler's office wherein he  
11 states that CFS II will serve its supplemental responses by Friday, January 11, 2013. A true and correct  
12 copy of this January 9, 2013 email is attached hereto and marked as Exhibit "G."

13 10. As of the date of this Declaration, CFS II has not further supplemented its  
14 document production in this case despite its repeated assurances that it would do so.

15 11. The discovery cutoff in this case is January 18, 2013.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
17 true and correct.  
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19 Executed this 15<sup>th</sup> day of January, 2013, at San Jose, California.

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21 /s/ Fred W. Schwinn  
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